

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

HARRY F. MCDONALD, JY-4454,)
Petitioner,)
)
v.) 2:11-cv-1072
)
DELAWARE COUNTY COURT OF)
COMMON PLEAS, et al.,)
Respondents.)

REPORT and RECOMMENDATION

I. Recommendation:

It is respectfully recommended that the petition of Harry F. McDonald for a writ of habeas corpus be transferred, forthwith, to the United States District Court for the Eastern District of Pennsylvania.

II. Report:

Harry F. McDonald has presented a petition for a writ of habeas corpus.

McDonald is presently incarcerated at the State Correctional Institution at Mercer serving a sentence imposed following his entry of a plea of guilty to charges in the Court of Common Pleas of Delaware County, Pennsylvania on January 13, 2011. He now contends that the Court of Common Pleas was without authority to entertain his plea in that the statute of limitations had expired.

It is provided in 28 U.S.C. §2241(d) that:

Where an application for a writ of habeas corpus is made by a person in custody under the judgment and sentence of a State court of a state which contains two or more Federal judicial districts, the application may be filed in the district court for the district wherein such person is in custody or in the district court for the district within which the State court was held which convicted and sentenced him and each of such district courts shall have concurrent jurisdiction to entertain the application. The district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.

While the petitioner is in custody in the Western District of Pennsylvania, the trial court

which sentenced him is located in Delaware County, which is located in the Eastern District of Pennsylvania. It, therefore, would appear that the interests of justice would best be served by transferring the petition to the United States District Court for the District of Pennsylvania.

Litigants who seek to challenge this Report and Recommendation must seek review by the district judge by filing objections within fourteen (14) days of this date. Failure to do so will waive the right to appeal.

Filed: August 29, 2011

Respectfully submitted,
s/ Robert C. Mitchell
United States Magistrate Judge